

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LEEWARD CONSTRUCTION COMPANY, LTD.

Petitioner,

-against-

AMERICAN UNIVERSITY OF ANTIGUA --
COLLEGE OF MEDICINE AND MANIPAL
EDUCATION AMERICAS, LLC f/k/a GCLR, LLC

Respondents.
-----X

Case No. 1:12-CV-06280-LAK/GWG
(ECF CASE)

Honorable Lewis A. Kaplan
United States District Judge

**DECLARATION OF
VERONICA A. MCMILLAN**

VERONICA A. MCMILLAN, being duly sworn, deposes and says:

1. I am a member of the law firm of Lewis & Greer, P.C., counsel for the Petitioner, Leeward Construction Company, Ltd. (hereinafter “Leeward”), and am fully familiar with all the facts and circumstances set forth herein.

2. I submit this declaration in support of Petitioner’s motion pursuant to Fed. R. Civ. P. 59(e) to amend the Judgment, entered March 28, 2013, granting Leeward’s amended petition to confirm its arbitration award to include the entry of a money judgment against Respondent American University of Antigua – College of Medicine for the net amount stated in the award.

STATEMENT OF FACTS

3. This proceeding arises out of a contract between Leeward and Respondent American University of Antigua – College of Medicine (“Respondent” or “AUA”) for the construction of a medical school in St. Johns, Antigua. The parties’ contract contained an arbitration clause requiring that any claim arising out of or related to the Contract be arbitrated in accordance with the Construction Industry Rules of the American Arbitration Association.

4. On February 3, 2011, Leeward initiated an arbitration against the AUA and on June 22, 2012, the arbitration panel certified a Final Award. The Final Award was modified on August 8, 2012 to correct some minor clerical errors in the award. (A copy of the Final Award is annexed hereto as Exhibit “E”.)

5. On August 16, 2012, Leeward filed a petition with the Court, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201 *et seq.*, for an order confirming Leeward’s award and for the entry of a money judgment against the Respondents for the amounts stated in the Award. On September 25, 2012, the Respondents cross-moved pursuant to the doctrine of *Forum Non Conveniens* and Fed. R. Civ. P. 12(b)(6) to dismiss Leeward’s petition or in the alternative, to vacate or modify the award pursuant to the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* On October 16, 2012, Leeward filed an amended petition to confirm together with its opposition to Respondents’ cross-motion. On November 15, 2012, the Respondents filed their reply to Leeward’s amended petition and opposition.¹

6. On March 28, 2013, the Court entered a Judgment, *inter alia*, granting Leeward’s amended petition to confirm the arbitration and denying Respondent American University of Antigua – College of Medicine’s motion to dismiss, modify or vacate the award. (A copy of the Judgment is annexed hereto as Exhibit “A”.) The salient facts and findings underlying the Judgment were recited in the Court’s Memorandum Opinion filed March 26, 2013. (A copy of the Court’s Memorandum Opinion filed March 26, 2013 is annexed hereto as Exhibit “B”.)

7. Following the expiration of the automatic fourteen (14) day stay following the Judgment’s entry, my office was informed by the Clerk of this Court that a Writ of Execution could not be issued until such time as the Judgment was amended to include a money judgment.

¹ For the purposes of simplicity and brevity, Leeward has not annexed all the underlying moving papers as exhibits to this motion as they are available to the Court via the Pacer System.

8. For the Court's convenience, annexed hereto as Exhibit "D" is a proposed Amended Judgment which includes interest on the award through April 23, 2013. The amounts contained in the proposed Amended Judgment are the same as those listed in the Final Award as well as Leeward's Petition to Confirm, dated August 14, 2012 and its Amended Petition to Confirm, dated October 16, 2012², the only difference being that the interest calculation has been updated to account for the elapsed time as follows³:

Award	Amount in US\$/ EC\$	Comments	Date Interest Runs From	Interest Per Diem Amount in US\$/ EC\$	Total Accrued Interest Through April 23, 2013 in US\$/ EC\$	Total with Interest in US\$/ EC\$
a.) Interest on the Payments Due and Unpaid	US\$16,524.95/ EC\$44,617.37	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$3.17/ EC\$8.56	US\$4,024.84/ EC\$10,867.08	US\$20,549.80/ EC\$55,484.45
b.) Damages	US\$86,174.12/ EC\$232,670.13	This sum shall accrue interest of 7% per annum from the date of issuance of this Final Award.	June 22, 2012	US\$16.53/ EC\$44.62	US\$5,040.60/ EC\$13,609.61	US\$91,214.72 EC\$246,279.74
c.) Overhead and Profit for work deleted, omitted or modified.	US\$297,184.91/ EC\$802,399.25	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$57.00/ EC\$153.88	US\$72,382.84/ EC\$95,433.68	US\$369,567.75/ EC\$997,832.93
d.) Additional Preliminaries	US\$176,954.46/ EC\$477,777.04	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$33.94/ EC\$91.63	US\$43,099.32/ EC\$116,368.16	US\$220,053.78/ EC\$594,145.20
e.) Change Order Work	US\$70,448.22/ EC\$190,210.19	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$13.51/ EC\$36.48	US\$17,158.48/ EC\$46,327.91	US\$87,606.70/ EC\$236,538.10

² For the Court's reference, a copy of Leeward's Amended Petition to Confirm, dated October 16, 2012, which includes these amounts is annexed hereto as Exhibit "C."

³ The Arbitration Tribunal awarded damages in Eastern Caribbean Dollars ("EC"). The conversion rate for Eastern Caribbean dollars is \$1.00 United States dollars for each \$2.70 Eastern Caribbean dollars. See <http://www.likeforex.com>.

f.) Retainage	US\$218,549.26/ EC\$590,083.00	This sum shall not accrue any interest. Leeward shall submit to AUA all contractually required documentation as set forth in Section 9.10.2 of the General Conditions. Leeward will have a term of not more than 30 calendar days from the date of issuance of this Final Award to submit said documentation. Once Leeward has submitted all required documentation accordingly, AUA shall release the retainage in a term not to exceed 30 calendar days, upon after which such amount shall start accruing interest at the rate of 7% per annum. If Leeward fails to comply with Section 9.10.2, of the General conditions in the time hereby stated and granted the claim for such amount will be considered relinquished. Considering that this case is sub-judice; the herein referred notice may be made by counsel for Leeward to counsel for AUA , or by Leeward to AUA.	August 12, 2012	US\$41.92/ EC\$113.17	US\$10,646.04/ EC\$28,744.32	US\$229,195.30/ EC\$618,827.32
	Total Award US\$865,835.92 EC\$2,337,756.98				Total Accrued Interest: US\$152,352.13 EC\$411,350.75	Total with Interest: US\$1,018,188.05 EC\$2,749,107.73

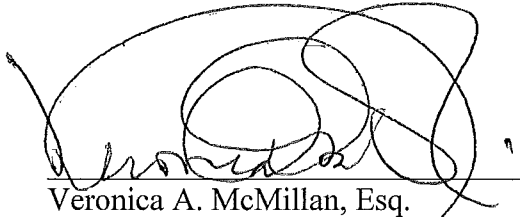
9. The Final Award also awarded the AUA damages in the sum of \$58,500.00 with 7% interest thereon from the 22nd day of June, 2012 for a total amount of \$107,383.56 as of April 23, 2013. (Exhibit E)

10. Deducting the AUA's award from Leeward's award yields a net judgment amount to Leeward of \$910,804.49 plus 7% interest until the judgment is paid. (Exhibit E)

11. Leeward respectfully requests that the Court enter a money judgment awarding Leeward judgment against AUA in the amount of \$910,804.49 plus 7% interest until the judgment is paid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 24, 2013



Veronica A. McMillan, Esq.